

REMARKS/ARGUMENTS

Claim rejections under 35 USC § 102

Claim 1 stands rejected under 35 USC § 102(b), as being anticipated by Gan et al. (5,964,807) or under 35 USC § 102(e) as being anticipated by Li et al. (6,764,514).

Applicant respectfully requests withdrawal of this rejection in view of Applicant's amendment to Claim 1 which requires that the material be in the form of a strip.

Claim rejections under 35 USC § 112

Claims 1-7, 12-14, 17, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41 stand rejected under 35 USC § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner asserts that the claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

This rejection is respectfully traversed on the ground that the use of the claimed materials in conjunction with the claimed invention is within the purview of one of ordinary skill of the art to use without undue experimentation. Specifically US 5,964,807 (Gan), discusses a number of biocompatible materials useful for repair of intervertebral disc. (see, e.g., Col 4, lines 18 – 50). In the description of Gan's invention itself, .."the support substrate (for the intervertebral disc) comprises polymer foam whose composition may be "adjusted to optimize cell growth" as suggested below:

"In still other aspects of the present invention the support substrate comprises polymer foam. Polymer foam useful in these aspects of the invention are biocompatible and include polyglycolide (PGA), poly(D,L-lactide)(D,L-PLA), poly(L-lactide) (L-PLA), poly(D,L-lactide-co-glycolide),(D,L-PLGA), poly(L-lactide-co-glycolide) (L-PLGA),

polycaprolatone(PCL), polydioxanone, polyesteramides, copolyoxalates, and polycarbonates. D,L-PLGA, which is preferred in some embodiments of the invention, may comprise 50% polylactide and 50% polyglycolide. About 75% polylactide and about 25% polyglycolide is still more preferred although it is anticipated that ratios may be varied to optimize particular features of the individual polymers. For instance, the mechanical strength of a polymer may be adjusted by varying the percentage of PLA and the percentage of PGA may be adjusted to optimize cell growth.”

US 5,964,807 Col 7, lines 11-26.

Thus, Applicants respectfully request the withdrawal of this rejection as Applicant asserts that it is within the purview of one skilled in the art to take a strip of a biocompatible material whose composition is adjusted for use as a intervertebral disc and to apply that strip into the intervertebral disc space to affect a repair of the intervertebral disc.

Based on the foregoing, Applicant believes this application is in condition for allowance. Should the Examiner have any questions in general or have any questions that would facilitate allowance of this application, the Examiner is invited to contact the undersigned at the phone number given below.

Respectfully submitted,

By: /Theodore J. Shatynski/
Theodore J. Shatynski
Reg. No. 36,676

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2498
Dated: October 6, 2006
Customer No. 000027777